IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 1473 of 2005

Between:

M/S.Sagar Cements limited, Mattampally (V),
Nalgonda District, rep., by its Manager-Accounts
Mr.G.Krishna Reddy.

..... PETITIONER

AND

1 The Assistant Commissioner (CT) LTU,
Nalgonda Division, Nalgonda.

2 The Appellate Deputy Commissioner (CT),
Hyderabad Rural Division, Hyderabad.

3 The Additional Commissioner (CT) Legal,
Andhra Pradesh, Nampally, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of certiorari or any other appropriate writ or order or direction quashing the order passed by the 3rd respondent in CCT's Ref.No. LIII(3)/120/05, dated 31-1-2005 as arbitrary and unjustified and consequently restrain the 1st respondent from taking any coercive steps for recovery of the balance disputed tax of Rs.21,18,865 /-

for the assessment year 2004-05, pending disposal of the appeal filed by the petitioner before the 2nd respondent and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.S.DWARAKANATH

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court at the admission stage made the following:

ORDER (Per the Hon'ble Sri Justice MHS Ansari)

Heard learned counsel for the respective parties.

The question involved is with regard to applicability of Section 5-AA of the A.P.G.S.T. Act. According to the petitioner, they are not liable for tax, as demanded under Section 5-AA of the Act. Further, the grievance of the petitioner is that even if it is held that Section 5-AA of the Act is applicable, the computation of tax has not been made according to law. The respondent authorities are of the view that the tax paid on first sale if reduced from the tax payable by the assessee, it would amount to giving benefit twice over. These are some of the contentions pending adjudication in the first appeal filed by the petitioner. The appeal is pending before the 2nd respondent herein. The grievance of the petitioner is that despite payment of 50% of the tax, the respondents are taking coercive steps for recovery of the balance amount even before the disposal of the appeal pending before the 2nd respondent herein.

Application filed for stay of collection of tax pending disposal of the appeal has been dismissed by the respondents 2 and 3 on the ground that there is no *prima facie* case to stay collection of disputed tax.

As the petitioner has complied with the condition of pre-deposit of tax (12.5%) and further we find that the amounts have also been paid towards tax making 50% of the disputed tax, we are of the view that interest of justice would be served if directions are issued to the 2nd respondent to dispose of the appeal

pending before it in accordance with law without insisting upon the payment of balance amount. Depending upon the result of the said appeal, it shall be open for the respondents to recover the same in accordance with law.

With the directions as above, the Writ Petition is accordingly stands disposed of. No order as to costs.

M.H.S.ANSARI, J

Dated: 03-02-2005.

T.CH.SURYA RAO, J

Hsd

Note: Issue copy on

Priority basis.

B/o

Hsd

Asst. Registrar

To

1 The Assistant Commissioner (CT) LTU,
Nalgonda Division, Nalgonda.

2 The Appellate Deputy Commissioner (CT),
Hyderabad Rural Division, Hyderabad.

3 The Additional Commissioner (CT) Legal,
Andhra Pradesh, Nampally, Hyderabad.

4. 2 C.Cs to G.P. for Commercial Tax, High Court buildings,

Hyderabad (Out)

5. 2 C.D. copies.